



State of California
Office of the Attorney General

ROB BONTA

ATTORNEY GENERAL

February 11, 2022

Dear Sheriff:

I write regarding our shared interest in ensuring that California jail inmates have access to reproductive healthcare. State and federal law mandates that county jails provide incarcerated people access to a range of reproductive healthcare services. In August 2020, the California Legislature strengthened protections for incarcerated people by passing AB 732, also known as the Reproductive Dignity for Incarcerated People Act.¹ This bill requires the criminal justice system to address the particular circumstances of pregnant people. Together with other provisions of state and federal law, AB 732 makes certain that inmates have access to abortion, pregnancy testing, choice of physician, family planning services, birth control, appropriate labor and delivery conditions, menstrual products, and accommodation of breast milk feeding.

The California Attorney General's Office is committed to ensuring compliance with the Reproductive Dignity for Incarcerated People Act, and related state and federal laws. To that end, we are collecting information and documents regarding these reproductive protections from all counties. Please provide the information and documents listed in "Attachment A". For your convenience, "Attachment B" provides the statutory provisions that you are obligated to comply with and provide for in your written policies. I thank you in advance for your cooperation.

Sincerely,

ROB BONTA
Attorney General

¹ A.B. 732, 2020 Leg., 2019-2020 Reg. Sess. (Cal. 2020).

Attachment A

Please provide the requested information and documents to Xiomara Thorburn at Xiomara.Thorburn@doj.ca.gov by March 11, 2022.

- All copies of the facility's current Custody Manual;
- Copies of any contracts with private facilities that house inmates;
- Copies of any contracts with private facilities that provide healthcare services to inmates;
- Copies of policies reflecting the rights of incarcerated pregnant persons, including the right to pregnancy testing, consent to pregnancy testing, and the right to abortion (Pen. Code, §§ 4023.8, subds. (a)-(c), 4028; 28 C.F.R. § 115.83);
- Copies of family planning services, and birth control access, information, and consent policies (Pen. Code, §§ 3440, 4023.5; 28 C.F.R. § 115.82);
- Copy of policy reflecting inmates' right to choice of physician, nurse practitioner, certified nurse midwife, or physician assistant (Pen. Code, § 4023.6; 28 C.F.R. § 115.83);
- Copy of birthing policy (Pen. Code, §§ 3407, subds. (b)-(c), 4023.8, subds. (l)-(m), (o));
- Copy of policy governing the provision of menstrual products (Pen. Code, § 4023.5, subd. (a)); and
- Copy of breast milk feeding policy (Pen. Code, § 4002.5).

Attachment B

Applicable Statutes

Abortion

- Incarcerated persons are entitled to the same reproductive rights as non-incarcerated people. (Pen. Code, § 4028, subd. (a).)
- A jail may not:
 - impose gestational limits inconsistent with state law;
 - unreasonably delay access to abortion care; or
 - require court-ordered transportation to obtain an abortion. (Pen. Code, § 4028, subd. (a).)
- A pregnant incarcerated person shall be offered comprehensive and unbiased options counseling that includes information about prenatal healthcare, adoption, and abortion by a licensed healthcare provider with reproductive healthcare training. (Pen. Code, § 4023.8, subds. (a)-(b).)
- Jail staff may not urge, force, or otherwise influence a pregnant person's decision. (Pen. Code, § 4023.8, subd. (b).)
- Nonmedical jail staff do not have the authority or discretion to decide if a pregnant person is eligible for an abortion. If a pregnant person decides to have an abortion, that person is entitled to all due medical care and accommodations until they are no longer pregnant. A pregnant person who decides to have an abortion must be referred to a licensed healthcare professional with reproductive healthcare training. (Pen. Code, § 4023.8, subd. (c).)
- The rights of incarcerated persons pertaining to abortion must be posted in a conspicuous place where all incarcerated people capable of becoming pregnant have access. (Pen. Code, §§ 4028, subd. (c); 4023.8, subd. (q).)

Pregnancy Testing

- A pregnancy test shall be offered, within seventy-two hours of arrival at the jail, during an intake health examination, and upon request, to a person who is identified as possibly pregnant or capable of becoming pregnant. (Pen. Code, § 4023.8, subd. (a).)
- Pregnancy tests shall be voluntary and not mandatory, and may only be administered by medical or nursing personnel. An incarcerated person who declines a pregnancy test shall be asked to sign an "Informed Refusal of Pregnancy Test" form that shall become part of their medical file. (Pen. Code, § 4023.8, subd. (a).)
- The pregnancy testing rights described in Penal Code section 4023.8 that must be provided for incarcerated persons who may become pregnant must be posted in at least one conspicuous place to which all incarcerated persons have access. (Pen. Code, § 4023.8, subd. (q).)
- Victims of sexually abusive vaginal penetration while incarcerated shall be offered pregnancy tests. Victims of sexual abuse while incarcerated shall be provided with

treatment, including pregnancy testing, without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. (28 C.F.R. § 115.83(d), (g).)

Right to Select Physician to Assist in Birthing

- Pregnant incarcerated people have the right to summon and receive the services of any physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice in order to determine whether they are pregnant. The superintendent of the facility may adopt reasonable rules and regulations with regard to the conduct of examinations to effectuate the determination. (Pen. Code, § 4023.6, subd. (a).)
- If found to be pregnant, the incarcerated person is entitled to a determination of the extent of the medical and surgical services needed and to the receipt of such services from the physician, nurse practitioner, certified nurse midwife, or physician assistant of their choice. (Pen. Code, § 4023.6, subd. (b).)
- Any expenses occasioned by the services of a physician, nurse practitioner, certified nurse midwife, or physician assistant whose services are not provided by the facility shall be borne by the incarcerated person. (Pen. Code, § 4023.6, subd. (b).)
- The rights provided by this section shall be posted in at least one conspicuous place to which all incarcerated persons capable of becoming pregnant have access. (Pen. Code, § 4023.6, subd. (e).)

Birth Control / Family Planning Services

- At intake, incarcerated people have the right, upon request, to continue birth control measures as prescribed by a physician, nurse practitioner, certified nurse midwife, or physician assistant. (Pen. Code, § 4023.5, subd. (a).)
- Every incarcerated person shall be provided with information and education regarding the availability of family planning services. (Pen. Code, § 4023.5, subd. (b).)
- Family planning services shall be offered to all incarcerated people at least 60 days prior to a scheduled release date. (Pen. Code, § 4023.5, subd. (c).)
- Upon request, any incarcerated person shall be furnished with the services of a licensed physician necessary to meet their family planning needs at the time of their release. (Pen. Code, § 4023.5, subd. (c).)
- Incarcerated persons who are victims of sexual abuse while incarcerated shall be offered timely information about and timely access to emergency contraception, such as Plan B, and sexually transmitted infections prophylaxis, such as PrEP, in accordance with professionally accepted standards of care, where medically appropriate. (28 C.F.R. § 115.82(c).)
- Treatment services shall be provided to the victim of sexual abuse without financial cost and regardless of whether the victim names the abuser or cooperates with any investigation arising out of the incident. (28 C.F.R. § 115.82(d).)

Birthing

- Restraining a pregnant incarcerated person during labor, delivery, or recovery is prohibited, except if “deemed necessary for the safety and security of the incarcerated person, the staff, or the public.” (Pen. Code, § 3407, subd. (c).)
- If the medical professional responsible for the incarcerated person’s care “determines that the removal of restraints is medically necessary,” they must be removed. (Pen. Code, § 3407, subd. (c).)
- Childbirth shall be treated as an emergency and incarcerated persons must be transported to a hospital “in the least restrictive way possible and in accordance with Section 3407.” (Pen. Code, § 4023.8, subd. (l).)
- An incarcerated pregnant person is allowed to have a support person present during labor, childbirth, and during postpartum recovery while hospitalized. (Pen. Code, § 4023.8, subd. (m).)
- During labor and delivery, the incarcerated pregnant person must be given the maximum level of privacy possible. (Pen. Code, § 4023.8, subd. (o).)

Menstrual Products

- Incarcerated persons must be provided menstrual products upon request, including, but not limited to, sanitary pads and tampons, free of charge. (Pen. Code, § 4023.5, subd. (a).)

Breast Milk Feeding

- The breast milk feeding policy must be based on currently accepted best practices and must include policies for the following three specific procedures:
 - providing medically appropriate support and care related to the cessation of lactation or weaning;
 - providing for human milk expression, disposal, and same-day storage for later retrieval and delivery to an infant or toddler by an approved person, at the option of the lactating inmate and with the approval of the facility administrator; and
 - conditioning an inmate’s participation in the program upon the inmate undergoing drug screening. (Pen. Code, § 4002.5.)
- The breast milk feeding policy must be posted in all locations in the jail where medical care is provided and communicated to all staff members who interact with or oversee pregnant or lactating inmates. (Pen. Code, § 4002.5, subd. (b).)